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TO: The Honorable City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: June 12, 2015

RE: **Great Lakes Water Authority (GLWA) lease announcement**

As Council may be aware from extensive media coverage, the City, the State and the three suburban County governments have signed a lease agreement regarding the assets of the regional water and sewer systems and the Great Lakes Water Authority. The full scope of this historic event is extremely complex, and not all the information is public at this time. LPD expects to be providing further supplemental reports as more information becomes available. At this time, attached please find the following new documents:

- GLWA Resolution 2015-06-08 Re: Approval of Regional Water Supply System Lease, Regional Sewage Disposal System Lease, and Water and Sewer Services Agreement;
- Public information handout regarding City of Detroit-Great Lakes Water & Sewer Leases & Service Agreement; and
- Order Amending Mediation Confidentiality Order dated June 11, 2015

Great Lakes Water Authority

Resolution 2015- 06 -08

RE: Approval of Regional Water Supply System Lease, Regional Sewage Disposal System Lease, and Water and Sewer Services Agreement

By Board Member: _____

- Whereas** A Memorandum of Understanding (the “MOU”) was entered into on September 9, 2014, by the Emergency Manager and the Mayor of the City of Detroit (the “City”), the County Executive of each of Macomb County, Oakland County and Wayne County, and the Governor of the State of Michigan, for the purpose of establishing a regional authority pursuant to Act 233, Public Acts of Michigan, 1955, as amended (“Act 233”), to operate, control and improve both the water supply system and sewage disposal system owned by the City and presently operated by the Detroit Water and Sewerage Department (except the City local system infrastructure) and to lease those portions of the water supply system and sewage disposal system that provide water service and sewer service to the wholesale customers of each respective system and to retail customers in the City up to the point of connection to the City local system infrastructure (hereinafter referred to as the “Regional Water System” and the “Regional Sewer System,” respectively) from the City for an initial term of 40 years; and
- Whereas** The Great Lakes Water Authority (the “Authority”) was established pursuant to Act 233 through the adoption of Articles of Incorporation (the “Articles”) by the City, Macomb County, Oakland County and Wayne County; and
- Whereas** The Articles provide that the Authority shall be automatically dissolved if it fails to approve and execute separate leases with the City for the Regional Water System and the Regional Sewer System, respectively, within 200 days of the effective date of the establishment of the Authority, which 200-day period expires on June 14, 2015; and
- Whereas** Subject to approval and execution by the Authority and the City, representatives of the Authority and the City have negotiated (i) a proposed Regional Water Supply System Lease between the City and the Authority (the “Water Supply Lease”) pursuant to which, among other things, the City will lease the Regional Water System facilities to the Authority, (ii) a proposed Regional Sewage Disposal System Lease between the City and the Authority (the “Sewage Disposal Lease”) pursuant to which, among other things, the City will lease the Regional Sewer System facilities to the Authority, and (iii) a proposed Water and Sewer Services Agreement between the City and the Authority (the “Water and Sewer Services Agreement”), pursuant to which, among other things, the Authority agrees to provide water and sewer services to retail customers in the City, sets forth the rate setting protocols for the revenue requirement to be established by the Authority for

such services, and appoints the City as the Authority's agent with respect to the development of rates, and billing, collecting and enforcing the collection of fees and charges from retail customers in the City for such services; and

Whereas The Authority has received a report from Plante Moran, dated May 29, 2015, that supports the conclusion that the payment in consideration for the Water Supply Lease and the Sewage Disposal Lease will not cause either the Regional Water System or the Regional Sewer System to be unable to provide a reasonable level of service, satisfy its debt obligations and adhere to the rate structure set forth in the City's Plan of Adjustment; and

Whereas Both the MOU and the Articles provide that at least 5 of the 6 members of the Authority Board must vote to approve the Water Supply Lease, the Sewage Disposal Lease and the Water and Sewer Services Agreement.

Now, Therefore Be It:

Resolved That the Water Supply Lease, the Sewage Disposal Lease and the Water and Sewer Services Agreement are each approved in the forms submitted to this meeting, and the Chairperson and the Secretary are authorized to execute and deliver the Water Supply Lease, the Sewage Disposal Lease and the Water and Sewer Services Agreement for and on behalf of the Authority in the forms approved; **And Be it Further**

Resolved That the appointment of the City as agent of the Authority for the purposes set forth in Article 2 of the Water and Sewer Services Agreement is ratified and confirmed; **And Be it Further**

Resolved That an affirmative vote of at least 5 members of the Authority Board is necessary for the passage of this Resolution.

Adopted by the Great Lakes Water Authority Board on: _____



City of Detroit-Great Lakes Water Authority Water & Sewer Leases & Service Agreement

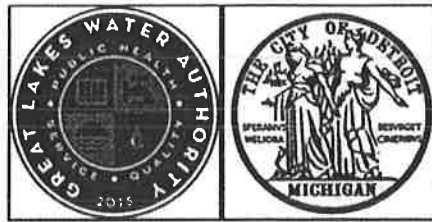
WATER AND SEWER FACILITIES LEASES:

- GLWA to be conveyed (via a leasehold interest) all regional water and sewerage facilities.
- GLWA to be conveyed interest in all water and sewer system revenues including City of Detroit retail revenues.
- DWSD bonds to be assigned to GLWA and are payable solely from Net Revenues of the System, no full faith and credit pledge.
- GLWA revenue requirements that are targeted not to increase by more than 4 percent per year include \$50M lease payment, \$4.5M Water Residential Assistance Program payment and GLWA employee related frozen Pension Obligation as expenses shared regionally (on a "common-to-all" basis).
 - Per an independent study conducted by Plante & Moran the 4-percent revenue increase cap is sufficient to support these payments and provide funds for "common-to-all" revenue-financed capital.
- The \$50M lease payment may only be used, at City's discretion, to pay for Detroit local capital improvements or Detroit's debt service obligations for bonds issued to pay for local or regional improvements.
- A budget stabilization fund to be created and funds set aside from Detroit retail revenues to ensure Detroit meets its customer collection responsibilities.
- GLWA to be assigned existing wholesale service contracts (subject to any required customer approvals not to be unreasonably withheld), vendor contracts, and labor contracts. GLWA is a successor employer.

WATER AND SEWER SERVICES AGREEMENT:

- City of Detroit is delegated, as Authority's agent, responsibility for setting retail rates, billing, collection and enforcement. Revocable by Authority in event of failure to satisfy requirements.
- Authority to establish two-year budget (periodically adjusted) and require quarterly financial reporting on Detroit retail performance with a Reconciliation Committee to address significant budget to actual variances, if necessary.
- Recent changes in the rate-setting policies of DWSD have provided additional assurances that wholesale and Detroit retail revenues will be realized.

*Leases become effective with the completion of conditions precedent including bondholder consents, contract assignments, permit transfers, Master Bond Ordinance, etc.



City of Detroit-Great Lakes Water Authority Agreement

Key Takeaways

- Historic, major step forward toward better, more transparent governance of the regional water and sewerage systems. While the lease has been executed, more work remains to fully stand up the Great Lakes Water Authority no later than January 1, 2016.
- Plante & Moran's feasibility study suggests the new authority's lease and low-income assistance program payments are feasible and the water and sewer systems are both expected to meet their ongoing revenue needs within the 4 percent annual revenue increase target.
- Creates guarantees and protections to ensure every community will be responsible for paying its own water and sewer bills. Highland Park amounts owed DWSD are not addressed in the lease agreement – Detroit Water and Sewerage Department has and will continue to pursue enforcement of a Circuit Court judgment ordering payment of amounts owed (\$26 million). The decision to enter or not to enter into the leases does not impact the ability to collect amounts owed from Highland Park.
- Establishes financial help for customers in need through a \$4.5 million regional Water Residential Assistance Program that will be available to all qualified residential customers in the regional system.
- Culminates a lengthy and complicated process that began nearly 200 days ago with the creation of a regional authority. That process required time and effort of representatives from across the region to collect and analyze the financial and other information needed to make this agreement possible.

40-year lease agreement forms first regional water authority in Southeast Michigan

Historic regional cooperation agreement between Detroit, Wayne, Oakland and Macomb counties provides better transparency and more regional control of the water and sewage system that serves some 4 million residents. It provides wholesale water and sewerage service to customers throughout Southeast Michigan and water and sewerage service to retail customers in the city of Detroit.

Lease agreement provides \$50 million annual payment to support infrastructure improvements

The \$50 million annual lease payment stays in the system and must be used to make much needed repairs and investments in Detroit local water and sewer system infrastructure many of which could both assist the City but also improve the regional system as well. Initially, \$22.5 million is dedicated to local water and \$27.5 million is allocated for the local sewer system or associated debt service.

The creation of the GLWA and the water and sewage services agreement protects customers

The lease helps protect all wholesale customers against the delinquencies of City retail customers, creating a budget stabilization fund in the initial amount of \$23 million for retail revenue protection over the next three years. This lease also helps protect City retail customers against delinquencies of the wholesale customers. This fund will help ensure all communities are responsible for their own bills and creates a stronger level of confidence in the system's revenue projections. This provides the greatest level of protection for wholesale customers possible and ratepayers are protected from dramatic year-to-year revenue rate increases.

Quarterly financial performance reviews creates better transparency and corrective action

Establishing "budget discipline measures" will help evaluate budget and agreement performance. Quarterly reviews allow for corrective actions to be implemented and ensures fiscal issues, if any, are dealt with immediately.

Agreement creates balance between Detroit and the suburbs in regards to funding and administration

Detroit will become GLWA's largest customer and the lease agreement recognizes the uniqueness of the city's physical and legal relationship to the regional system. Factors include the integrated nature of the Detroit and regional piping systems, join regulatory responsibilities and the City's continued ownership of the water and sewerage asset.

Water rates to be based on past usage

In addition to other elements such as peak demands, the amounts that the communities pay to the authority for water will be based on the 24-month average of the two most recent years' volume of actual and will have a greater fixed cost element than in previous years. Previously, rates were based on customer-community water purchase commitments and had a smaller fixed cost component. This new approach, effective July 2015, should reduce significant fluctuations in revenues because the rates are

more closely tied to actual usage, not assumptions. Local communities set the rates charged to their residents and commercial customers for services including both the individual community costs as well as the amounts currently paid to DWSD.

In addition, with the changes in the methods and assumptions used in calculating the sewer charges to the communities, the charges have been largely fixed in any given year with variances prospectively considered. Billings for the sewer services rendered are now sent monthly and have improved the cash flow of the sewer operations (previously billed quarterly).

Authority assumes GLWA employee related pension obligations

The Authority, the City of Detroit and Detroit General Retirement System will enter an agreement regarding pension obligation reporting to enable the authority to manage its obligation to pay the GRS for its share of DWSD's obligation to the frozen GRS defined benefit plan. Actuarial reports will assist the Authority in managing this obligation to limit the amount of potential GRS liability it in 2023 and help ensure that the Authority funds only its share of the GRS in periods from FY-2024 forward.

Lease agreement takes effect upon satisfaction of conditions.

The lease agreement has been executed, but will not be effective until certain conditions have been met by no later than January 1, 2016.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Chapter 9
City of Detroit, Michigan, Case No. 13-53846
Debtor, Judge Thomas J. Tucker
_____ /

ORDER AMENDING MEDIATION CONFIDENTIALITY ORDER

Pursuant to 11 U.S.C. § 105, on August 13, 2013, a Mediation Order was issued in this case, outlining a process for conducting facilitative mediations of matters referred within the context of the bankruptcy litigation.

In April of 2014, the Honorable Sean F. Cox was appointed to serve as the mediator for discussions and negotiations related to the potential establishment of a regional authority to operate and manage the regional assets of the Detroit Water and Sewerage Department. In an Order issued on November 26, 2014, Judge Rhodes¹ ordered that Judge Cox shall continue to serve as a judicial mediator in this case for purposes of facilitative mediation of matters regarding the Great Lakes Water Authority. (Docket Entry No. 8468). In an Order entered on June 5, 2015, the undersigned judge extended Judge Cox's appointment as mediator until January 1, 2016. (Docket Entry No. 9942).

Judge Cox has apprised this Court that with the conclusion of the mediation efforts associated with the lease agreements and the water and sewer services agreement, the mediation order relating to confidentiality of discussions relating to those agreements may be lifted

¹ Judge Steven Rhodes presided over this case until his retirement, at which time the undersigned judge was assigned to this case.

prospectively, to the extent described by this Order, below.

IT IS ORDERED that effective immediately, the Order entitled "Mediation Confidentiality Order" entered on February 6, 2015 (Docket # 9176, the "Confidentiality Order") is amended to permit all parties and their representatives to publicly disclose and discuss the lease agreements and the water and sewer services agreement, and the final terms of those agreements, as they now exist as a result of the mediation.²

IT IS FURTHER ORDERED that discussions which occurred during the mediation of the agreements referred to above, and all drafts of such agreements and related documents, shall remain privileged and confidential and shall not be disclosed.

IT IS FURTHER ORDERED that other documents associated with the conditions to the effectiveness of the leases and the water and sewer services agreement shall not be subject to disclosure until they are final, unless otherwise directed by this Court.

IT IS FURTHER ORDERED that except as amended by this Order, the Confidentiality Order remains in full effect.

IT IS FURTHER ORDERED that Judge Cox may, in his discretion, continue to direct the parties to engage in facilitative mediation on substantive issues, process, and issues regarding information development and exchanges.

Signed on June 11, 2015

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

² Such agreements are still subject to approval by the Board of the Great Lakes Water Authority.